

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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**W19b**

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| Continued              | 9/12/01  |

## STAFF REPORT: APPEAL

### SUBSTANTIAL ISSUE DETERMINATION

**Application number.....A-3-SLO-01-061**

**Applicant.....California Department of Parks and Recreation (DPR)**

**Appellant .....Nell Langford**

**Project location.....**Pier Avenue, Oceano, San Luis Obispo County (APNs 060-381-010, 060-381-011, 060-381-002, 060-382-003, 061-091-020, 075-111-001, 075-111-002, 092-391-013, 092-391-017, 092-391-018, 092-391-031)

**Project description.....**Maintain existing sand ramp by grading accumulated windblown sand and moving excess sand to the adjacent beach area.

**Local approval.....**Minor Use Permit/ Coastal Development Permit D960168P was approved by the San Luis Obispo County Board of Supervisors on May 15, 2001.

**File documents.....**San Luis Obispo County certified Local Coastal Program; documents and materials used by San Luis Obispo County in consideration of local permit D960168P; San Luis Obispo County Emergency Permit P000837E; Permit Amendment file 4-82-300-A5; Coastal Development Permit File 3-96-116.

**Staff recommendation ....****Staff recommends that the Commission determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed.**

**Summary:** The California Department of Parks and Recreation proposes to conduct maintenance activities on the Pier Avenue sand ramp, which provides vehicle ingress and egress from the Oceano Dunes State Vehicular Recreation Area (ODSVRA). The maintenance activities involve grading and moving sand that accumulates on top of the packed road base ramp to allow for continued vehicular use. These activities will take place inland of the mean high tide, and are therefore subject to the coastal development permit requirements of San Luis Obispo County, and must conform to the San Luis Obispo County certified Local Coastal Program (LCP).



**California Coastal Commission**  
**October 2001 Meeting in Coronado**

Staff: SM Approved by:

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The appellant contends that the project negatively impacts pedestrian beach access and environmentally sensitive dune habitats (appeal attached as Exhibit C).

This project, and the issues raised by the appeal, are directly related to the larger coastal resource issues regarding the operation of the ODSVRA park unit recently addressed by the Commission in its action of Coastal Development Permit Amendment 4-82-300-A5 (Revised Findings adopted May 7, 2001). That action established a Technical Review Team (TRT) to advise the park superintendent on matters related to the management of the ODSVRA and the protection of sensitive habitats. Accordingly, the TRT will have input on how maintenance of the Pier Avenue ramp should be coordinated with area wide objectives for habitat protection and coastal access and recreation.

In the interim, the ramp maintenance project proposed by DPR and conditionally approved by the County has been designed to avoid adverse impacts on sensitive habitats and coastal access and recreation. Staff therefore recommends that the Commission determine that **the appeal does not raise a substantial issue** because the project has been designed to protect environmentally sensitive habitats and coastal access, consistent with the requirements of the LCP and the access and recreation policies of Chapter 3 of the Coastal Act.

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Exhibit D: Conditions of Local Approval

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Exhibit F: Correspondence received prior to 8/22/01

Exhibit G: Correspondence received after 8/22/01

## I. Summary of Appellants' Contentions

For the full text of the appellant's contentions, please refer to Exhibit C. In summary, the appellant contends that the project significantly negatively impacts the pedestrian beach access historically located south of Pier Avenue as well as sensitive dune and beach habitats. The appeal does not identify any specific LCP or Coastal Act policies with which the appellant believes the project does not conform.

## II. Local Government Action

The San Luis Obispo County Planning Commission conditionally approved Coastal Development Permit D960168P for the project on July 13, 2000. This decision was appealed to the County Board of Supervisors, who acted to affirm and modify the Planning Commission's approval on May 15, 2001. The conditions of the County approval are attached to this report as Exhibit D.

Following the appeal of the County permit, which deferred the effectiveness of the local approval, the County issued an emergency permit (P000837E) for a more limited sand ramp maintenance project which has allowed DPR to maintain the ramp while the appeal has been pending. The emergency permit was issued on the basis that ramp maintenance is necessary to provide timely access to the park unit for emergency vehicles, and therefore necessary for public safety. As opposed to maintaining a 36-foot wide ramp, the emergency permit limits maintenance to a 28 foot wide ramp between June 28 and July 9, 2001 and between August 30 and September 4; and, a twelve foot ramp between July 26 and August 29, 2001 and after September 5, 2001. Surveys for snowy plover nests and chicks must be conducted prior to emergency maintenance activities undertaken during the nesting period (March 1 – September 30). The emergency permit requires that if nests and chicks are found, all activity must be postponed until the nest has hatched, or disappeared, and all chicks have left the area. The emergency permit also requires that the maintenance activities conform to US Fish and Wildlife Service provisions.

It is the regular permit approved by the County, as opposed to the Emergency Permit, that is the subject of this appeal.



### III. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the sea and the first public road paralleling the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. The project is located between the nearest public road and the sea and thus, this additional finding needs to be made in a *de novo* review in this case.

### IV. Staff Recommendation on Substantial Issue

**MOTION:** *I move that the Commission determine that Appeal No. A-3-SLO-01-061 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.



**RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-3-SLO-01-011 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act.

### III. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Description

##### 1. Project Location

The project is located at the Oceano Dunes State Vehicular Recreation Area (ODSVRA) in the community of Oceano, San Luis Obispo County. The ramp that is the subject of the proposed maintenance activities is located at the seaward end of Pier Avenue, and provides one of two primary access points for vehicles to enter the ODSVRA (the other access ramp is located approximately 1.25 miles to the north, at Grand Avenue in the City of Grover Beach). Sand removed from the ramp is proposed to be placed on the beach, above the mean high tide line, in an area approximately 150 feet by 300 feet immediately to the west and the northwest of the ramp (see Exhibit B), in the same general area that has been used in the past..

##### 2. Project Description

The project involves grading and removing sand from an existing vehicle access ramp constructed of packed road base material. The ramp is approximately 36 feet wide and 100 feet long. Excess sand will be deposited on the adjacent beach within an area above the mean high tide line measuring 150 feet by 300 feet. The terms of the County permit, which are attached as Exhibit D, require:

- Biologist verification that no snowy plover nesting site is within 200 feet of the disturbance areas prior to undertaking any maintenance activities;
- Postponement of maintenance activities if any snowy plover nests or chicks are found at the sand ramp or surrounding area;
- Conformance with the Biological Opinion issued by the U.S. Fish and Wildlife Service;
- Consultation with the County Environmental Coordinator is any archaeological resources are discovered;
- Notification of the proper authorities in the event of a petroleum product spill;



- Evidence that all required state and federal permits have been obtained; and,
- Compliance with state and federal endangered species laws.

In addition, the County approval prohibits:

- Sand removal on weekends or between 8 a.m. and 5 p.m. on weekdays;
- Removal of vegetation; and
- Equipment fueling or maintenance on the beach, or use of leaking equipment

### 3. Background

The first wooden vehicle access ramp at Pier Avenue was constructed in the 1920's. It has always been necessary to remove sand from the bottom of the wooden ramp to allow for vehicle access. Originally, local merchants supported this operation. Then, San Luis Obispo County contracted for sand removal and, later, DPR assumed responsibility for sand removal. This situation remained until the severe storms of 1982 and 1983. During this period, storms destroyed both the wooden ramp and the unmaintained sand ramp, which was created by the ingress and egress of all-terrain vehicles. This occurred just south of the wood ramp. In the aftermath of the storms, DPR decided to maintain only the sand ramp in place of the wooden ramp. In 1983 a kiosk was constructed at the end of Pier Avenue pursuant to Coastal Development Permit 4-82-300, prior to certification of the San Luis Obispo County LCP. In 1988, the County's LCP was certified and permit authority for projects landward of the mean high tide was assumed by the County.

In early 1992, the Commission approved Coastal Development Permit 4-91-58, an after-the-fact permit authorizing DPR to remove and excavate beach sand to create and maintain the sand ramp. A permit from the Commission, as well as the Army Corps of Engineers was required for that project because it included the disposal of sand below the mean high tide line. This permit had a duration of five years. Upon its expiration, DPR applied for another 5 year maintenance permit (again including sand disposal below the mean high tide line). This application was conditionally approved by the Commission in May 1997 (Coastal Development Permit 3-96-116), and was supposed to allow for ramp maintenance until February 28, 2002. However, the U.S. Army Corps of Engineers permit required for the disposal of sand below the mean high tide line expired on March 21, 2001. In response, DPR redesigned the project to eliminate any work below the Mean High Tide. As a result, the currently proposed maintenance falls entirely within the coastal development permit authority of the County of San Luis Obispo.

## B.Substantial Issue Determination

### 1. Environmentally Sensitive Habitats

#### a. LCP Policies



Coastal Plan Policy 35 for Environmentally Sensitive Habitat Areas states:

**Recreational Off-Road Vehicle Use of Nipomo Dunes**

Within designated dune habitats, recreational off-road vehicle traffic shall only be allowed in areas identified appropriate for this use. Detailed recommendations concerning protection of the dune habitats within Pismo State Beach and Pismo Vehicular Recreation area are found in the chapter regarding Recreation and Visitor-Serving Facilities.

The Coastal Plan Policy document chapter on Recreation and Visitor-Serving Facilities referenced above contains a discussion of Pismo State Beach and State Vehicular Recreation Area, describing attendance, recreational uses, the environment, conflicts and adverse impacts, access, carrying capacity, and the State Park General Plan (pages 3-13 – 3-22). This LCP discussion does not provide specific development standards, but rather describes the issues related to continued vehicle use. As noted on page 3-13, development standards for the ODSVRA are contained in the South County Area Plan. These standards are attached to this report as Exhibit E. In summary, they provide the following policies regarding the protection of sensitive habitats:

- Approval of development must be accompanied by a finding that DPR is making a commitment of sufficient manpower to ensure resource protection, ordinance enforcement and access control in conformance with the conditions of Coastal Development Permit No. 4-82-30[0]A;
- Access points are to be controlled, with primary access for off-road vehicles to be provided in accordance with CDP 4-82-30[0]A (e.g., Pier Avenue).
- Natural buffer areas for sensitive areas are to be identified and fenced, and habitat enhancement programs are to be undertaken at Dune Lakes, Coreopsis Hill, Oso Flaco Lake, and Little Oso Flaco Lake.

More generally, Coastal Plan Policies regarding Recreation and Visitor-Serving Facilities require, in relevant part:

- Protection of recreation and visitor-serving facilities (Policy 1);
- Recreational uses shall be consistent with the protection of significant coastal resources (Policy 2); and,
- Recreational development shall conform with State Park Master Plans, applicable LCP regulations, carrying capacity, and habitat protection (Policy 6).

**b. Analysis**

The LCP recognizes that Oceano Dunes has been designated as an state off-highway vehicle recreation area, and includes standards intended to allow this recreational activity to continue in a manner that



preserves the surrounding dune habitats. Maintenance of the Pier Avenue sand ramp is not in conflict with these standards, which specifically identify Pier Avenue as a primary access point for vehicular access. In accordance with LCP requirements, the project has been designed by DPR, and conditioned by the County, to avoid adverse impacts to sensitive habitats, among other ways, by prohibiting the removal of dune vegetation, and requiring biological monitoring to ensure that maintenance activities do not impact snowy plovers.

As detailed in the findings for 4-82-300-A5, there are many significant coastal resource issues raised by overall vehicle use of the dunes, particularly with regard to protecting environmentally sensitive dune habitats. As adopted by the Commission, the Technical Review Team (TRT) proposed by the amendment will provide a forum to resolve these issues, including any issues related to on-going maintenance of the Pier Avenue Sand Ramp. The TRT is in the process of being created, and according to the conditions of approval, are to meet prior to November 7, 2001. The TRT, and the actions taken by the superintendent of the ODSVRA in response to the TRT's recommendations will be subject to continued oversight by the Commission through the submission of the required annual report, and the mandated annual permit renewal process.

### c. Conclusion

The appeal does not raise a substantial issue regarding the project's conformance with LCP standards protecting environmentally sensitive habitats because the specific ramp maintenance project has been designed and conditioned to avoid impacts to sensitive habitats. Any potential adverse ESHA impacts related to pier maintenance or use that may be documented in the future can be appropriately responded to by the TRT and the condition compliance review procedures established by 4-82-300-A5.

## 2. Coastal Access and Recreation

### A. LCP and Coastal Act Policies

LCP standards specific to the ODSVRA include those identified in the preceding finding and those attached to this report as Exhibit E. Other, more general LCP access standards that relate to the appellant's contention that the ramp maintenance project impacts pedestrian access include:

- Coastal Plan Policy 1 for Shoreline Access, which prohibits development from interfering with the public's right of access to the sea;
- Coastal Plan Policy 4 for Shoreline Access, which calls for the provision and maintenance of facilities and improvements needed to support the existing and proposed intensity and level of access use;
- Coastal Plan Policy 7 for Shoreline Access, which necessitates that the level and intensity of shoreline access be consistent with public safety concerns related to bluff stability, trail improvements and the adequacy of facilities such as signs, fences, and stairways; and





- Coastal Plan Policy 8 for Shoreline Access, which requires that the provision of maximum access minimize conflicts with adjacent uses.

Because the project is seaward of the first public road, it must also comply with the public access and recreation policies of Chapter 3 of the Coastal Act. In summary, the Coastal Act policies applicable to the access issue raised by the appeal include:

- Coastal Act Section 30210 calling for maximum access to be provided consistent with public safety and natural resource protection;
- Coastal Act Section 30211, prohibiting development from interfering with the public's right of access to the sea; Coastal Act Section 30212.5, requiring public access facilities should be distributed throughout an area to mitigate against the impacts of overcrowding and overuse;
- Coastal Act Section 30214, requiring that access policies be implemented in a manner that takes into account the need to regulate the time, place and manner of public access; and
- Coastal Act Section 30223, which reserves upland area necessary to support coastal recreation for such use.

## B. Analysis

The appellant contends that the Pier Avenue ramp maintenance project “significantly negatively impacts the pedestrian beach access historically located south of Pier Avenue” and results in “the covert confiscation of a large area of beach historically used by pedestrians”. These allegations imply that the project is inconsistent with the protection of pedestrian access, and incompatible with pedestrian beach recreation, in conflict with the LCP and Coastal Act standards identified above.

Indeed, concerns regarding the compatibility of vehicle and pedestrian use of the beach are recognized by the Commission and specifically described in the certified LCP. Protection of public safety, and the general public's ability to access and enjoy the shoreline, are fundamental requirements under both the Coastal Act and the certified LCP.

In responding to this important issue, the Commission's action on Coastal Development Permit Amendment 4-82-300-A5 included various conditions intended to enhance management of the unit. These include interim vehicle limits, establishment of the TRT, and requirements for ongoing research, monitoring, and annual reports. These conditions, and the continued oversight of the Commission, will provide an effective method to respond to the compatibility concerns related to overall park management raised by the appeal.

However, with regard to the more narrow, specific ramp maintenance activities which are the subject of the appeal, the project has been conditioned by the County to minimize adverse impacts on pedestrian and general beach access and recreational uses by prohibiting maintenance activities during weekends, and between 8 a.m. and 5 p.m. on weekdays. This is consistent with the protocols established by the Commission in its action of the former sand ramp maintenance permit (Coastal development Permit 3-96-



116). With this condition, maintenance activities will not interfere with pedestrian access or beach recreation.

### C. Conclusion

The appeal does not raise a substantial issue regarding project consistency with LCP and Coastal Act access and recreation standards because maintenance activities, as conditioned by the County, will not interfere with pedestrian access and beach recreation. The Commission notes that broader issues regarding the compatibility of vehicle use of the dunes and general public access, and how the specific maintenance activities associated with the Pier Avenue ramp fits into these broader issues, will be addressed by the TRT and the Park Superintendent pursuant to the procedures established by the Commission in its action of Coastal development permit Amendment 4-82-300-A5.

